

UNITED STATES OF AMERICA
FEDERAL ENERGY REGULATORY COMMISSION

Before Commissioners: Pat Wood, III, Chairman;
Nora Mead Brownell, Joseph T. Kelliher,
and Suede G. Kelly.

Southern California Edison Company

Docket No. ER04-1176-000

ORDER ACCEPTING AND SUSPENDING PROPOSED REVISION TO
TRANSMISSION OWNER TARIFF, AND ESTABLISHING HEARING AND
SETTLEMENT JUDGE PROCEDURES

(Issued November 1, 2004)

1. On September 2, 2004, Southern California Edison Company (SoCal Edison) filed to increase its Reliability Services (RS) Revenue Requirement and associated rates under its Transmission Owner (TO) Tariff by approximately \$49 million above the Reliability Must-Run (RMR) costs currently in effect. As discussed below, the Commission accepts the revised tariff sheets, suspends them for a nominal period, to become effective thereafter, subject to refund, and establishes hearing and settlement judge procedures. Additionally, the Commission grants waiver of its 60-day prior notice requirement to make the revision effective November 1, 2004, as requested. This order benefits customers because it ensures that reliability services rates are set at just and reasonable levels.

I. Background

2. The California Independent System Operator Corporation (CAISO or ISO) bills SoCal Edison directly for costs incurred in SoCal Edison's service area to maintain the reliability of the ISO-controlled grid. These reliability costs include both the RMR costs under RMR contracts, which allow the ISO to call upon specific RMR generating units as needed, and Out-Of-Market dispatch (Local OOM) costs incurred by the CAISO to address location-specific reliability needs (e.g., redispatching a generator that had not bid into the ISO market to address a transmission outage). SoCal Edison, in turn, recovers these costs from its customers. The Commission previously accepted SoCal Edison's forecasted RS Revenue Requirement, of approximately \$17.5 million for calendar year 2004, and the associated rates to recover these costs from its customers, in Docket No. ER04-122-000. SoCal Edison's 2004 forecast reflected the terms of a Commission-

approved settlement in Docket No. ER03-142-000.¹ Among other things, this settlement also establishes the allocation factors for the RS Revenue Requirement to wholesale, retail and Existing Transmission Contract customers who are subject to RS rates.²

3. In the instant filing, SoCal Edison states that its current forecast of RMR costs for calendar year 2004, which includes the costs of three RMR units at Alamitos and Huntington Beach in addition to Local OOM costs, is no longer adequate in light of recent cost increases. Specifically, SoCal Edison states that it is experiencing higher RMR costs as a result of the ISO's pass-through of costs associated with the recent addition of two RMR units in its service area at Etiwanda, as well as higher costs than originally forecasted for the existing RMR units. Thus, SoCal Edison asserts that if the currently-effective RS Revenue Requirement is not revised, it anticipates a shortfall in its RS Balancing Account of \$38 million by the end of 2004.³ This figure results from SoCal Edison's estimation that it will be billed approximately \$4.5 million per month for the remainder of 2004 for the Etiwanda units, and that the existing units will incur approximately \$22 million in additional costs over the current forecasted costs. Accordingly, SoCal Edison proposes to increase its RS Revenue Requirement to approximately \$66 million, but notes that this increase will only be in effect for two months and, then, be superseded by its annual RS cost update filing, which is effective January 1 of each calendar year.

II. Notice of Filing and Responsive Pleadings

4. Notice of SoCal Edison's filing was published in the *Federal Register*, 69 Fed. Reg. 56,212 (2004), with interventions and protests due on or before September 23, 2004. The California Electricity Oversight Board, and CAISO filed timely motions to intervene. The California Department of Water Resources, State Water Project (DWR) and the Metropolitan Water District of Southern California (Metropolitan Water District) (collectively, Protestors) filed timely motions to intervene and protests.

¹ Southern California Edison Company, 106 FERC ¶ 61,118 (2004).

² Arizona Electric Power Cooperative is allocated 0.07 percent; the City of Colton, California is allocated 0.32 percent; California Department of Water Resources is allocated 3.59 percent; and SoCal Edison's retail customers are allocated 96.02 percent.

³ The RS Balancing Account tracks the difference between the forecasted RMR costs and the actual billing from the ISO, which is then trued-up so that the account should be close to zero by the end of each calendar year.

5. Generally, Protestors argue that SoCal Edison's TO Tariff, Commission orders and the settlement authorize SoCal Edison to only propose a rate revision annually through the required annual RS costs update. They contend further that SoCal Edison has not justified this second calendar year 2004 adjustment, which will last only for the months of November and December.⁴ Protestors challenge SoCal Edison's assertion that a rate increase is needed now to prevent a \$38 million shortfall in 2004 and to prevent a larger rate increase in calendar year 2005. Lastly, Protestors argue that the Commission's filed rate doctrine and the rule against retroactive ratemaking bar the Commission from adjusting current rates to make up for over- or -under collection of costs in prior periods. Protestors assert that the Commission may not impose a rate increase for services already provided.

6. The Protestors propose that, if the Commission does not reject SoCal Edison's proposed rate filing, the Commission should suspend the filing for the maximum period and set it for hearing.

7. On October 8, 2004, SoCal Edison filed an answer.

III. Discussion

A. Procedural Matters

8. Pursuant to Rule 214 of the Commission's Rules of Practice and Procedure, 18 C.F.R. § 385.214 (2004), the timely, unopposed motions to intervene serve to make the entities that filed them parties to this proceeding.

9. Rule 213(a)(2) of the Commission's Rules of Practice and Procedure, 18 C.F.R. § 385.213(a)(2)(2004), prohibits an answer to a protest unless otherwise ordered by the decisional authority. We are not persuaded to accept SoCal Edison's answer and, therefore, we will reject it.

B. SoCal Edison's Proposed Rate Increase

10. We disagree with Protestor's claim that SoCal Edison is precluded from making this section 205 filing. Article 2 of the settlement specifies the rate methodology to be used in developing the 2004 RS rates, the allocation ratios for each customer, and provides that "...[SoCal Edison] shall not file to change the rate methodologies for and/or allocations among RS customers such that the change would become effective prior to January 1, 2005." However, Article 2.3 of the settlement states that "... SCE

⁴ Protestors point out that SoCal Edison concedes in its filing that it will file its 2005 annual rate adjustment for its RS Revenue Requirements in November of 2004.

remains free to change, pursuant to a filing under [Federal Power Act] Section 205, other aspects of RS, such as adding new categories of RS costs and to reflect changes in the RS Revenue Requirement.” The instant filing reflects the addition of two generating units, designated by the ISO as RMR units on June 25, 2004, which were not included in the original forecast of RMR costs approved by the Commission earlier this year. In addition, SoCal Edison states that it expects to begin receiving substantial bills from the ISO associated with the revised allocation of must-offer minimum load costs. Accordingly, we find that the settlement allows SoCal Edison to make a section 205 filing to recover these additional costs.⁵

C. Hearing and Settlement Judge Procedures

11. SoCal Edison proposes to use the same rate methodologies and allocations approved in the settlement in the derivation of the proposed rates to be charged to its customers. However, SoCal Edison has updated certain expense factors recently adopted by the California Public Utilities Commission. Additionally, SoCal Edison states that its forecast of the additional RMR costs it will be billed by the ISO for the remainder of calendar year 2004 for the two Etiwanda units is based on a fixed cost component and a variable cost component. The fixed cost component is derived based on the Fixed Option Payment Factor and Annual Fixed Revenue Requirement stated in the RMR agreement. However, due to lack of historical cost information, SoCal Edison states that it has estimated the net variable costs for the Etiwanda RMR units. These estimates assume that the units will produce RMR energy at 50 percent of the maximum annual MWh in the contract, based on the historical production from SoCal Edison’s existing RMR units for the January through June 2004 time period. Thus, SoCal Edison’s filing presents issues of material fact regarding the level of the proposed increase that cannot be summarily resolved.

12. The Commission’s preliminary analysis indicates that SoCal Edison’s filing has not been shown to be just and reasonable and may be unjust, unreasonable, unduly discriminatory or preferential, or otherwise unlawful. Accordingly, the Commission will accept the proposed revision to the TO Tariff and the associated rates for filing, suspend them for a nominal period, to become effective on November 1, 2004, subject to refund, and set them for hearing.

⁵ In Direct Testimony filing by Berton J. Hansen, on behalf of SoCal Edison, Mr. Hansen affirms that SoCal Edison intends to file in November its 2004 RS True-up filing, and that “all indications are that SoCal Edison’s RS Revenue Requirement in effect in 2005 will be significantly higher than the RS Revenue Requirement proposed in the instant filing.”

13. While the Commission is setting these matters for a trial-type evidentiary hearing, we encourage the parties to make every effort to settle their disputes before hearing procedures are commenced. To aid the parties in their settlement efforts, the hearing will be held in abeyance and a settlement judge will be appointed pursuant to Rule 603 of the Commission's Rules of Practice and Procedure.⁶ If the parties desire, they may, by mutual agreement, request a specific judge as a settlement judge in this proceeding; otherwise, the Chief Judge will select a judge for this purpose.⁷ The settlement judge shall report to the Chief Judge and the Commission within 60 days of the date of this order concerning the status of settlement discussions. Based on this report, the Chief Judge shall provide the parties with additional time to continue their settlement discussions or provide for the commencement of a hearing by assigning the case to a presiding judge.

D. Waiver of Commission's Prior Notice Requirements

14. SoCal Edison requests waiver of the 60-day prior notice requirement to allow the revised proposed tariff sheets to be effective November 1, 2004, one day earlier than would otherwise be the case. SoCal Edison explains that, without this rate increase, its RS Balancing Account will be significantly under-recovered. According to SoCal Edison, this, coupled with the expected RS cost increases, makes the November 1, 2004 effective date imperative. The Commission finds good cause to grant SoCal Edison's request for waiver of the Commission's prior notice requirement to permit an effective date of November 1, 2004.

The Commission orders:

(A) The proposed revision to the TO Tariff and the associated rates are hereby accepted for filing and suspended for a nominal period, to become effective on November 1, 2004, subject to refund, as discussed in the body of this order.

(B) Waiver of the Commission's 60-day prior notice requirement is hereby granted.

(C) Pursuant to the authority contained in and subject to the jurisdiction conferred on the Federal Energy Regulatory Commission by section 402(a) of the Department of Energy Organization Act and the Federal Power Act, particularly sections

⁶ 18 C.F.R. § 385.603 (2004).

⁷ If the parties decide to request a specific judge, they must make their request to the Chief Judge by telephone at 202-502-8500 within five days of the date of this order. The Commission's website contains a listing of the Commission judges and a summary of their background and experience (<www.FERC.gov> -- [click](#) on Office of Administrative Law Judges).

205 and 206 thereof, and pursuant to the Commission's Rules of Practice and Procedure and the regulations under the Federal Power Act, 18 C.F.R. Chapter I), a public hearing shall be held concerning the justness and reasonableness of the proposed revision to the TO Tariff and the associated rates. However, the hearing will be held in abeyance to provide time for settlement judge procedures as discussed in Paragraphs (D) and (E) below.

(D) Pursuant to Rule 603 of the Commission's Rules of Practice and Procedure, 18 C.F.R. § 385.603 (2004), the Chief Administrative Law Judge is hereby directed to appoint a settlement judge in this proceeding within fifteen (15) days of the date of this order. Such settlement judge shall have all the powers and duties enumerated in Rule 603 and shall convene a settlement conference as soon as practicable after the Chief Judge designates the settlement judge. If the parties decide to request a specific judge, they must make their request to the Chief Judge in writing or by telephone within five (5) days of the date of this order.

(E) Within sixty (60) days of the date of this order, the settlement judge shall file a report with the Chief Judge and the Commission on the status of the settlement discussions. Based on this report, the Chief Judge shall provide the parties with additional time to continue their settlement discussions, if appropriate, or assign this case to a presiding judge for a trial-type evidentiary hearing, if appropriate. If settlement discussions continue, the settlement judge shall file a report at least every sixty (60) days thereafter informing the Chief Judge and the Commission of the parties' progress toward settlement.

(F) If the settlement discussions fail, a presiding administrative law judge, to be selected by the Chief Judge, shall convene a prehearing conference in these proceedings, to be held within approximately fifteen (15) days of the date of the presiding judge's designation to the Commission and the Chief Judge, in a hearing room of the Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, D.C. 20426. The presiding judge is authorized to establish procedural dates and to rule on all motions (except motions to dismiss) as provided for in the Commission's Rules of Practice and Procedure.

By the Commission.

(S E A L)

Linda Mitry,
Deputy Secretary.